

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

March 11, 2005

N440
Mark A. Spruance
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Criminal Action Nos. 92-01-0382, 0383(R3)
Defendant ID No. 92S00269DI - Motion for Postconviction Relief

Dear Mr. Spruance:

Your Motion for Postconviction Relief has been reviewed by the Court and it is denied.

In the present Motion, you allege that you were illegally arrested, that the jury convicted you of attempted robbery in the 1st degree without considering whether or not your actions were intentional, and that there was insufficient evidence as to the rape charge.

On December 17, 1992, you were convicted of attempted robbery and unlawful sexual intercourse in the 1st degree. You received a sentence of 28 years at supervision Level 5, followed by probation. The Delaware Supreme Court affirmed your conviction on March 25, 1994. *Spruance v. State*, 640 A.2d 655 (Table), 1994 WL 144590 (Del. Supr.) (Order).

On October 28, 1996, you filed Motion for Postconviction Relief which was denied. The Supreme Court affirmed this Court's ruling on March 20, 1997. *Spruance v. State*, 692 A.2d 415 (Table), 1997 WL 139811 (Del. Supr.) (ORDER). Then on August 11, 1997, you filed your second Motion for Postconviction Relief which was denied on January 23, 1998. That decision was appealed and the Supreme Court affirmed same on July 15, 1998. *Spruance v. State*, 718 A.2d 529 (Table), 1998 WL 666714 (Del. Supr.) (ORDER).

Your present application is procedurally barred under Rule 61(i)(1) as it is filed more than three years from the date your conviction was final. The Supreme Court affirmed your conviction on direct appeal on March 25, 1994, and the mandate returning the case to this Court is dated April 14, 1994. It has been almost 11 years since your conviction was affirmed and therefore the present action is procedurally barred.

It is also barred because this is your third Motion for Postconviction Relief. It is barred as being a repetitive Motion under Rule 61(i)(2). There is nothing in your application which requires that the Court revisit your case because of any claims that the Court lacked jurisdiction or that there was a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity, or fairness of the proceedings leading to your conviction. Rule 61(i)(5). Your complaint that the jury did not find that you intentionally attempted to commit robbery in the 1st degree is erroneous in that the instructions to the jury clearly advised them that they had to find your conduct was intentional.

The Defendant's Motion for Postconviction Relief, being procedurally barred, is dismissed.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice